

BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KIMBERLY D. GRAMLING)	
Claimant)	
V S .)	
AMERICAN BAR-B-QUE & GRILL, INC.)	Docket No. 206,257
Respondent)	
A N D)	
ZURICH-AMERICAN INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from a preliminary hearing Order of June 19, 1996, wherein Administrative Law Judge Alvin E. Witwer denied claimant benefits finding claimant had not proven by a preponderance of the credible evidence that her injury on March 11, 1995 arose out of and in the course of her employment with the respondent. Judge Witwer went on to deny claimant medical treatment at the expense of the respondent.

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment with the respondent on the date alleged.
- (2) Whether the Administrative Law Judge exceeded his jurisdiction in failing to order that respondent pay past medical bills which were incurred at the direction of respondent prior to respondent's objection to the compensability of this claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant suffered an injury on March 11, 1995, after she exited her husband's car on her way to work. She stepped from the parking lot onto the curb in front of respondent's business and there slipped and fell, landing on her left side, injuring her hip and left shoulder. Respondent's business is located in a strip mall in Kansas City and shares the parking lot with several other businesses. Claimant acknowledged the parking lot and sidewalk in front of the respondent's business could be used to access several other businesses in the area. She further acknowledged that there was no special hazard associated with the sidewalk.

In order for claimant's injury to be compensable she must prove that she suffered accidental injury arising out of and in the course of her employment with respondent. See K.S.A. 44-501(a). K.S.A. 44-508(f) establishes an exception to coverage for an employee who is going to work but has not yet reached the employer's premises:

"The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer."

The Supreme Court discussed in depth the term "premises" as used in K.S.A. 44-508(f) in the case of Thompson v. Law Offices of Alan Joseph, 19 Kan. App. 2d 367, 869 P.2d 761, 256 Kan. 36, 883 P.2d 768 (1994). In Thompson the claimant was denied benefits after she slipped and fell exiting an elevator on her way to her employment. The Court acknowledged two exceptions to the "going and coming" rule, the first being the premises exception and the second being the special hazard exception. Claimant does not argue in this case a special hazard existed. The Appeals Board finds the sidewalk in front of the respondent's place of business as a route generally used by the public in the strip mall cannot be deemed a part of the respondent's premises for the purpose of subjecting respondent to liability for claimant's injury. As such, the Appeals Board finds the Order of the Administrative Law Judge denying claimant benefits and finding claimant did not prove by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment should be, and is hereby, affirmed.

K.S.A. 44-534a grants the Administrative Law Judge the right to make decisions regarding claimant's entitlement to medical treatment. Appeals from preliminary hearing orders are strictly controlled under K.S.A. 44-534a and K.S.A. 44-551. As the Administrative Law Judge has the authority by statute to decide issues dealing with the entitlement of claimant to medical treatment, the Appeals Board cannot say the Administrative Law Judge in any way violated his jurisdiction by denying claimant's request for payment of past medical bills. As such, the Appeals Board does not have the jurisdiction to consider this issue at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Alvin E. Witwer dated June 19, 1996, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Clifford K. Stubbs, Lenexa, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director